

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.104 of 2000

Date of decision : July 13, 2007

State of H.P.	...Appellant.
Versus	
Bhupinder Kumar	...Respondent.

Coram

The Hon’ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashok Chaudhary, Additional Advocate General.

For the Respondent : Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Accusation was made against the respondent by his wife that he had contracted another marriage during the subsistence of their marriage.

3. The accusation was made in the form of a complaint submitted by the wife to the Additional Chief Judicial Magistrate, Shimla. The Additional Chief Judicial Magistrate, through a letter addressed to the SHO, sent the complaint to him for investigation, under Section 156(3) of the Code of Criminal Procedure. Police investigated the case and submitted a report under Section 173 of the Code of Criminal Procedure, therein alleging that the respondent had committed an offence under Section 494 IPC. The report was in the form of challan, under Section 173 of the Code of Criminal Procedure.

Whether reporters of the local papers may be allowed to see the judgment?

4. Chief Judicial Magistrate took the cognizance of the offence, on the basis of the report under Section 173 of the Code of Criminal Procedure and proceeded to try the respondent. On the conclusion of the trial, respondent was acquitted on merits.

5. The very act of the taking of cognizance by the Chief Judicial Magistrate, on the report under Section 173 of the Code of Criminal Procedure, was without jurisdiction because of the bar contained in Section 198 of the Code of Criminal Procedure, which says that no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, except on a complaint made by the aggrieved person. In other words, in the case of an offence under Section 494 IPC, which is part of Chapter XX of IPC, cognizance can be taken by the Magistrate only when there is a complaint by the aggrieved spouse. In this case, as demonstrated hereinabove, the cognizance was taken on police report and not on the complaint of the wife.

6. In view of the abovestated position, even though the appeal is accepted and judgment of the trial Court acquitting the respondent is set aside, at the same time the very first order of the Chief Judicial Magistrate which, as per record, is dated 19.12.1994, for the summoning the respondent, is also set aside and the subsequent proceedings too are set aside, being without jurisdiction. The complainant may, if so advised, institute fresh proceedings by making a complaint to the Judicial Magistrate having jurisdiction in the matter.

7. Appeal stands disposed of.

July 13, 2007_(sd)

(Surjit Singh), J